

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

THE FAMILY PLANNING ASSOCIATION OF
MAINE D/B/A MAINE FAMILY PLANNING,
on behalf of itself, its staff, and its patients, *et al.*;

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, *et al.*;

Defendants.

Case No. 1:19-cv-00100-LEW

**PLAINTIFFS’ OPPOSED
MOTION TO AMEND
PRELIMINARY INJUNCTION
ORDER OR IN THE
ALTERNATIVE, FOR
INJUNCTION PENDING
APPEAL, AND UNOPPOSED
MOTION FOR EXPEDITED
BRIEFING**

INJUNCTIVE RELIEF SOUGHT

**PLAINTIFFS’ OPPOSED MOTION TO AMEND PRELIMINARY INJUNCTION
ORDER, OR IN THE ALTERNATIVE FOR INJUNCTION PENDING APPEAL,
AND UNOPPOSED MOTION FOR EXPEDITED BRIEFING**

Pursuant to Federal Rules of Civil Procedure 59 and 60, Plaintiffs—The Family Planning Association of Maine d/b/a Maine Family Planning (“MFP”), on behalf of itself, its staff, and its patients; and J. Doe, DO, MPH, individually and on behalf of Dr. Doe’s patients—hereby file this motion to amend the Decision and Order on Motion for Preliminary Injunction (ECF No. 77) (the “Order”), in order to clarify the factual and legal impact of a recently-enacted Maine law, An Act to Authorize Certain Health Care Professionals to Perform Abortion, P.L. 2019, ch. 262 §§ 1596 to 1599-A (the “New Law”), which was signed into law on June 10, 2019. In the Order, the Court deemed the New Law material to its decision that certain of Plaintiffs’ claims are unlikely to succeed and to its conclusions related to the harms Plaintiffs will suffer. *See, e.g.*, Order at 25 n.23 (stating that the New Law “has serious implications for Plaintiffs’ preliminary injunction showing”). As detailed in the Memorandum of Law and the accompanying

Supplemental Declaration of George Hill, filed contemporaneously herewith, the Court's conclusions about the factual and legal impact of the New Law were manifestly erroneous. Accordingly, the Court should amend the Order to clarify these facts about the impact of the New Law and grant the Motion for Preliminary Injunction based on this information.

Alternatively, pursuant to Federal Rule of Appellate Procedure 8(a)(1), Plaintiffs respectfully request that this Court enjoin the challenged regulation, *Compliance with Statutory Program Integrity Requirements*, 84 Fed. Reg. 7714-01 (March 4, 2019) (the "Rule"), pending resolution of Plaintiffs' Appeal of the Order to the First Circuit. Plaintiffs' counsel has conferred with counsel for Defendants, who have stated that they oppose both requests for injunctive relief.

In addition, because this matter is time sensitive, Plaintiffs further request expedited briefing and decision on this motion. Counsel for the parties have conferred regarding the briefing schedule and have agreed to the following schedule, subject to the Court's approval: Defendants would file their opposition by July 23; Plaintiffs would file their reply by July 29.

This Motion is supported by the contemporaneously filed Memorandum of Law and the accompanying Supplemental Declaration of George Hill. For the reasons stated therein, Plaintiffs respectfully request that the Court grant this Motion to Amend the Preliminary Injunction Order or in the Alternative for Injunction Pending Appeal, and that the Court enter an expedited briefing schedule in accordance with the parties' agreement.

Dated: July 16, 2019

Respectfully submitted,

/s/ Richard L. O'Meara

Richard L. O'Meara
Murray Plumb & Murray
75 Pearl Street
Portland, ME 04104
Telephone: (207) 773-5651
romeara@mpmlaw.com

Emily Nestler*
Molly Duane*
Arielle Humphries*
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
Telephone: (917) 637-3600
enestler@reprorights.org

Emily Ullman*
Jennifer Saperstein*
Covington & Burling LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001
Telephone: (202) 662-6000
eullman@cov.com

*Attorneys for Plaintiffs The Family Planning
Association of Maine d/b/a Maine Family Planning
& Dr. J. Doe*

**Admitted Pro Hac Vice*